

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

DECISION and ORDER

-vs-

11-CR-6210

DARYL E. VONNEIDA

Defendant

This case was referred by text order of the undersigned, entered December 23, 2011, to Magistrate Judge Jonathan W. Feldman, pursuant to 28 U.S.C. § 636(b)(1)(A)-(B), ECF No. 15. On April 30, 2012, Defendant filed an omnibus motion, ECF No. 26, seeking *inter alia* suppression of statements purportedly made by Defendant to law enforcement on September 14, 2011, as well as suppression of tangible evidence seized from Defendant's residence at 1636 Price Road on September 14, 2011, pursuant to a search warrant or alternatively order a *Franks* hearing with respect to the seizure of such tangible evidence. As to Defendant's application to suppress statements, an evidentiary hearing was held June 14, 2012, ECF No. 34. On November 1, 2012, Magistrate Judge Feldman filed a Report and Recommendation ("R & R"), ECF No. 41, recommending that Defendant's application to suppress statements and that his application to suppress tangible evidence along with his alternative application for a *Franks* hearing be denied. Defendant timely filed objections to the R & R on November 15, 2012, ECF No. 42, arguing that "the Court reject the recommendations set forth in Magistrate Judge Feldman's R & R and grant Mr. Vonneida's motions to suppress tangible evidence and statements. Alternatively, the Court should direct that a *Franks* hearing be conducted to determine whether the search warrant for 1636 Price Road was

based upon materially false and misleading statements" Objections to Magistrate Judge's R&R of November 1, 2012, p.31, ECF No. 42.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the R & R to which objections have been made. Upon a *de novo* review of the R & R, including a review of the transcript, ECF No. 35, of the evidentiary hearing held on June 14, 2012 and the search warrant and application at issue, the Court accepts the proposed findings and recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Feldman's R & R, ECF No. 41, defendant's application to suppress statements and his application to suppress tangible evidence or alternatively for a *Franks* hearing, ECF No. 26, are denied.

IT IS SO ORDERED.

Dated: Rochester, New York
December 19, 2012

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge